

- (a) said cover being a bag substantially oblong in shape;
- (b) said cover being of ample size to enclose a bunch;
- (c) said bag composed of a flexible open-mesh fabric which allows free circulation of air throughout the fruit cluster, yet excludes insects and birds, provides a windbreak, and partially shades said bunch;
- (d) said fabric made of water-repellant, UV resistant fiber; and
- (e) means for anchoring the top of said bag to the fruitstalk of said bunch.

Claim 2, change "Claim 1" to —Claim 7—.

Claim 3, change "Claim 1" to —Claim 7—.

Claims 5 and 6, cancel.

REMARKS

General

By the above amendment, applicant has amended Claim 1 to define the invention more particularly and distinctly so as to overcome the rejections and define the invention patentably over the prior art.

The Rejection of Claim 1 under 35 U.S.C. 102(b) Is Overcome

Claim 1 was rejected under 35 U.S.C. 102(b) since it was said to be unpatentable over Alexander; therefore, it has been rewritten as new Claim 7 to clearly distinguish it over this reference.

Applicant requests reconsideration of this rejection, as now applicable to Claim 7, for the following reasons:

(1) Claim 1, now rewritten as new Claim 7, recites:

“(a) said cover being a bag substantially *oblong* in shape;”

and,

(2) Claim 1, now rewritten as new Claim 7, recites:

“(c) said bag composed of a flexible *open-mesh* fabric which allows free circulation of air throughout the fruit cluster, yet excludes insects and birds, provides a windbreak, and partially shades said bunch;”

Note: The limitations added to the claim are italicized here for emphasis.

This language distinguishes over Alexander under Section 102 because Alexander limits his invention to a bag substantially globular in shape, and because he does not state nor imply in the specification that said bag is made of an open-mesh material.

The material Alexander shows in Figs. 1 and 2 is a flexible, woven, dense fabric of considerable thickness, such as burlap. The warp and fill threads are represented by a graphic symbol also used for flexible, woven, open-mesh fabric; however, regardless of the graphic symbol, the material is clearly defined in the specification as thermally insulating, which means it cannot be open-mesh because then there would be no insulation – during a freeze, heat would rapidly radiate from the fruit through the pores of the fabric to the atmosphere and be lost, thereby providing no protection.

A material need not be open-mesh to be air and water permeable. Alexander is concerned about rain or irrigation water from sprinklers being trapped inside the cover. Therefore, he specifies materials that allow water to seep out and evaporate, but are dense enough to provide insulation. Free circulation of air in contact with the fruit is not a criterion for protecting it against cold – actually, the less air movement, the better.

Alexander does not teach the use of an oblong shaped bag or open-mesh fabric for protecting maturing fruits and vegetables from low temperature.

Accordingly, applicant submits that Claim 7 is patentable over Alexander and should be allowed.

The Rejection of Claims 2 and 3 under 35 U.S.C. 103(a) Is Overcome

Claims 2 and 3 were rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander.

Applicant requests reconsideration of this rejection for the following reason:

One of ordinary skill in the art of protecting maturing fruits and vegetables from low temperature would never have provided Alexander with a fabric that has a weight of 86-113 grams per square meter and a cloth count of approximately 13 warps by 10 fills per square centimeter, since such a fabric has no insulation quality. Applicant's invention solves a different problem than the reference, and such different problem is recited in the claims. In re Wright, 6 USPQ 2d 1959 (1988).

Alexander claims a cover for thermally protecting fruits from a soft freeze, which damages many fruits while they are maturing, citrus in particular. Dates are never damaged by freezes, because they are susceptible to the effects of low temperature only during summer, when they are still green. Artificially ripening dates by freezing in the fall after they are harvested, when they are yellow or brown, and storing ripe dates in freezers are common practices.

Applicant claims a cover for protecting Deglet Noor dates from birds, rain, insects, wind, and sunburn, that at the same time allows maximum aeration. If transpiration of moisture from the dates during ripening is inhibited, fruit quality is lowered and eventually the dates will rot. Claims 2 and 3 are directed to a material that, above all, is porous enough to provide free circulation of air but still excludes beetles and moths. The surface of the date "sees" the atmosphere, thereby allowing not only rapid transpiration of moisture, but also radiation of heat. A thermally insulating material is designed to block this form of heat loss.

Accordingly, applicant submits that dependent claims 2 and 3 are patentable over Alexander and should also be allowed.

Conclusion

For all the above reasons, applicant submits that the claims as amended define over the prior art under Section 102, and the claimed distinctions are of patentable merit under Section 103 because of the new results. Therefore, applicant submits that this application is now in full condition for allowance, which action applicant respectfully solicits.

Conditional Request for Constructive Assistance

Applicant has amended the specification and claims of this application so that they are proper, definite, and define novel structure which is also unobvious. If, for any reason, this application is not believed to be in full condition for allowance, applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to M.P.E.P. § 2173.02 and § 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without need for further proceedings.

Very respectfully,

A handwritten signature in cursive script that reads "S. P. Denis". The signature is written in black ink and is positioned below the text "Very respectfully,".

Stephen Paul Denis, Applicant Pro Se